

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF ON BEHALF OF APPELLEE

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED APR 22 1942

IN THE

Joseph W. Sokolin
United States Court of Appeals
for the District of Columbia

—
No. 8056
—

857

JOSEPH FOX SOKOLIN, APPELLANT

vs.

HUBERT ESTES, APPELLEE

—
BRIEF ON BEHALF OF APPELLEE
—

JAMES A. O'SHEA,

ALFRED GOLDSTEIN,

Attorneys for Appellee.

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No. 8056

JOSEPH FOX SOKOLIN, APPELLANT

vs.

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BRIEF ON BEHALF OF APPELLEE

Appellant claims alleged errors by the District Court of the United States for the District of Columbia (a and b) Denying motion to take deposition of plaintiff (appellant here) (c) Refusing continuance.

This appeal has no merit.

Appellant could have taken deposition of plaintiff without leave of court.

Rule 26 of the Rules of Civil Procedure for the District Court of the United States for the District of Columbia, provides:

“RULE 26. DEPOSITIONS PENDING ACTION.

“(a) When Depositions May be Taken. By leave of court after jurisdiction has been obtained over any

defendant or over property which is the subject of the action or *without such leave after an answer has been served*, the testimony of any person, whether a party or not, may be taken at the instance of any party by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes." (Italics ours.)

Local Civil Rules, Rule 12, provides:

"Rule 12. Pre-Trial.

"(a) Federal Rule 16 to Apply. Cases on the pre-trial calendar shall be pre-tried as provided by Rule 16 of the Federal Rules of Civil Procedure.

"(b) Failure to Appear. If any party fails to appear when an action is reached in the regular call of the daily pre-trial calendar, the pre-trial justice may act as in case of non-appearance for final trial."

Rule 10 of the Local Civil Rules, P. 9, provides:

"Rule 10. Postponement of Trial.

"(a) Pre-Trial Justice to Determine. A motion to postpone a trial or a pre-trial shall be determined by the pre-trial justice.

"(b) Motion for; Diligence; Affidavit. A motion to postpone a trial must be filed as soon as diligence permits, supported by an affidavit fully disclosing the grounds therefor.

"(c) Absent Witness; If Ground of Motion. When the motion to postpone a trial is grounded upon absence of a witness the affidavit shall set forth the mate-

rial matter to which it is expected the witness will testify. If the adverse party admits that the witness would so testify the court may deny the motion, making a note of the admission for use at the trial."

From the above it will be seen, that counsel for appellant, after answer was filed, could have taken the deposition without leave of court. As early as May 5, 1941, counsel for appellant knew where his client was and could have followed the rules of the District Court governing the same. This he failed to do. It is respectfully urged the appeal taken in this case should be dismissed.

Respectfully submitted,

JAMES A. O'SHEA,
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Attorneys for Appellee.